

CALIFORNIA CODE OF REGULATIONS

TITLE 27. ENVIRONMENTAL PROTECTION

DIVISION 1. GENERAL FUNCTIONS AND RESPONSIBILITIES

PROPOSED REGULATIONS

**UNIFIED AGENCY REVIEW OF
HAZARDOUS MATERIALS RELEASE SITES**

Adopt new CCR Title 27 section 16100 to read:

16100. Applicability.

(a) The provisions of this article establish requirements for allowing a responsible party who agrees to carry out a site investigation and remedial action to request the designation of a single state or local agency to oversee the response action at a specific site.

(b) The investigation and remedial action at a hazardous materials release site undertaken by an administering agency will be implemented consistent with all existing grants and delegations of federal authority.

(c) Federally-mandated permits must be issued by the agency to which the permitting authority has been delegated by the federal government.

(d) The Site Designation Committee process applies only to the investigation and remediation of hazardous materials at a site. Permits for operational or other activities at a site, such as land use permits, are not subject to the Site Designation Committee process.

NOTE: Authority cited: Section 26261, Health and Safety Code. Reference: Section 25261 of the Health and Safety Code.

Adopt new CCR Title 27 section 16110 to read:

16110. General Provisions.

(a) The administering agency for a hazardous materials release site shall supervise all aspects of a site investigation and remedial action conducted by the responsible party and, for that purpose, the administering agency shall, notwithstanding any other provision of state or local law, including, but not limited to, Division 20 of the Health and Safety Code and Division 7 (commencing with Section 13000) of the Water Code, have sole jurisdiction over all activities that may be required to carry out a site investigation and remedial action necessary to respond to the hazardous materials release at the site. The administering agency shall:

(1) Administer all state and local laws, ordinances, regulations, and standards that are applicable to, and govern, the activities involved with the site investigation and remedial action at the site.

(2) Determine the adequacy of site investigation and remedial activities at the site and the extent to which the activities comply, or fail to comply, with applicable state and local laws, ordinances, regulations, and standards. In making these determinations, the administering agency shall consult with the advisory team if one has been convened pursuant to Health and Safety Code Section 25263.

(3) Issue permits or other forms of authorization that may be required by state and local laws, ordinances, and regulations and that are necessary to undertake activities related to the site investigation and remedial action at the site. Before issuing a permit or other authorization pursuant to this paragraph, the administering agency shall consult with the appropriate agency and ensure that required procedures are followed and adequate permit requirements and conditions are imposed.

(b) In administering all state and local laws, ordinances, regulations, and standards that are applicable to, and govern, the activities involved with the site investigation and remedial action at the site, the administering agency shall administer any statutory or regulatory provisions regarding cost recovery with regard to work related to the site.

(c) An administering agency shall comply with all California Environmental Quality Act (CEQA) requirements that are applicable to the investigation and remedial action at the site.

(d) The committee, in consultation with the Secretary, shall conduct a review within 5 years of the effective date of the regulations in this article to determine whether any of the regulations in this article should be amended or repealed.

NOTE: Authority cited: Section 26261, Health and Safety Code. Reference: Section 25264 of the Health and Safety Code.

Adopt new CCR Title 27 section 16120 to read:

16120. Definitions.

(a) “Certificate of Completion” means the written document setting forth the determination of the administering agency that the responsible party has satisfactorily completed the investigation and remedial action at the site, and that a permanent remedy to the release has been accomplished.

(b) “Secretary” means the Secretary for Environmental Protection of the California Environmental Protection Agency.

NOTE: Authority cited: Section 25261, Health and Safety Code. Reference: Section 25260 of the Health and Safety Code.

Adopt new CCR Title 27 section 16130 to read:

16130. Designation of Lead Agency.

(a) A responsible party for a hazardous materials release site may request the committee at any time to designate an administering agency to oversee a site investigation and remedial action at the site, by submitting a site designation application.

- (i) The application shall include all information required by the committee to make a designation. The application document, entitled "Request for Designation of Administering Agency," (Form AB2061, Revised 11/30/98), sets forth the information required make a request for designation. The request for designation of an administering agency will not be deemed received by the committee until all the required information is received by the committee.
- (ii) The application shall be signed by the responsible party or a legally authorized representative of the responsible party
- (iii) Applications shall be mailed to the California Environmental Protection Agency, Site Designation Committee at the address shown on the back of the application form.
- (iv) Responsible parties shall provide the committee with 10 copies of the application and all accompanying documentation. Copies will be provided to each member of the Committee.

(b) An application for designation of an administering agency for a single site with multiple responsible parties may be submitted to the committee so long as at least one responsible party agrees to carry out the entire site investigation and remedial action at the site.

(c) The committee shall designate an administering agency as responsible for the site within 45 days of the date the request for designation is received.

(d) If, at any time after the committee receives an application for designation of an administering agency, any member of the committee, or any staff working on behalf of the committee, believes that circumstances exist that will cause the committee to fail to designate an administering agency or deny the request for designation within the 45 day period ,that person shall immediately so inform the chairperson of the committee in writing via facsimile, electronic mail, or hand delivery.

(e) If the committee fails to designate an administering agency or to deny the request for designation within 45 days of the date the request for designation is received, the committee shall convene a formal meeting of its members for the purpose of determining the reason for the failure to act on the request for designation in a timely manner, and to set a new date for action on the request. The committee's determinations will be set forth in writing and distributed to the applicant, other responsible parties at the site, and all interested persons, as set forth in the request for designation.

(f) Any agency selected by the committee as the administering agency for a site, that does not agree to become the administering agency for the site may appeal pursuant to section 25267 of the Health and Safety Code.

NOTE: Authority cited: Section 25261, Health and Safety Code. Reference: Section 25262 of the Health and Safety Code.

Adopt new CCR Title 27 section 16140 to read:

16140. Determination of Administering Agency Qualification.

(a) Definitions.

(1) “Administrative Enforcement Order” means an order issued pursuant to the agency’s authority to order investigation and remedial action at hazardous materials release sites.

(2) “Technical Staff” means staff assigned to oversee the investigation and remedial action at a hazardous materials release site.

(b) Determination of Qualification.

(1) Any Certified Unified Program Agency which is qualified to implement corrective action pursuant to CCR Title 22, section 68500.5, is presumed qualified to be an administering agency for purposes section 25262(c)(1)(E) of the Health and Safety Code.

(2) The Department of Toxic Substances Control, the State Water Resources Control Board or Regional Water Quality Control Boards, and the Department of Fish and Game are presumed qualified to be an administering agency for purposes of section 25262(c)(1)(E) of the Health and Safety Code.

(c) In order for the committee to determine if an administering agency, not presumed qualified pursuant to (b)(1) and (b)(2) of this section, is qualified to implement and enforce the requirements for site investigation and remedial action at the site, the responsible party shall demonstrate in its application for designation of an administering agency that the proposed administering agency substantially meets the following criteria:

(1) Capacity to Administer the Issuance of Administrative Enforcement Orders. A proposed administering agency shall have the capacity to administer the issuance of administrative enforcement orders for investigation and remedial action at hazardous materials release sites.

(2) Personnel Expertise Requirements.

(A) Administering Agency Personnel Expertise. Administering agency personnel designated to oversee investigation, remedial action, and permitting at a site shall have technical expertise appropriate to oversee the investigation and remedial action at the site.

(B) Third Party Technical Expertise. An administering agency that does not have personnel with adequate technical expertise as specified in subparagraph (2)(A) to conduct the investigation, remedial action and required permitting at a hazardous materials release site, may meet the technical expertise qualifications if the administering agency has at least one technical staff who meets the criteria specified in subparagraph (2)(A) and who will oversee one of the following:

1. A third party who meets the qualifications in subparagraph (2)(A) who will oversee the investigation and remedial action pursuant to an agreement with the administering agency, or

2. A local, state, or federal environmental enforcement agency with staff who meet the requirements specified in subparagraph (2)(a) who will oversee the investigation and remedial action pursuant to an interagency agreement with the administering agency.

3. A Registered Environmental Assessor, Class II, as certified by the Office of Environmental Health Hazard Assessment.

(C) Specialized Expertise. An administering agency shall have access, as needed, to technical expertise for the review and approval of all engineering, toxicological, and geological interpretations, conclusions and recommendations that are conducted in conformance with applicable state law.

NOTE: Authority cited: Section 25261, Health and Safety Code. Reference: Section 25262 of the Health and Safety Code.

Adopt new CCR Title 27 section 16150 to read:

16150. Site Certification.

(a) Upon determining that a site investigation and remedial action at a hazardous materials release site has been satisfactorily completed and that a permanent remedy to the release has been accomplished, the administering agency shall issue the responsible party a certificate of completion. The certificate of completion shall describe the release of hazardous materials that was the subject of the investigation and remedial action and the remedial action that was taken, and shall certify that applicable remedial action standards and objectives were achieved, and any conditions imposed.

(b) Except as otherwise provided in Health and Safety Code Section 25265 and this subdivision, the issuance of a certificate of completion by the administering agency shall constitute a determination that the responsible party has complied with the requirements of all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial action for which the certificate is issued. No agency that has jurisdiction over hazardous materials releases pursuant to those state and local laws, ordinances, or regulations may take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued unless one of the following applies:

(1) Monitoring, testing, or analysis of the hazardous materials release site subsequent to the issuance of the certificate of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remedial action or certificate of completion are violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action or certificate of completion for the site are not adequately funded or not properly carried out.

(4) A hazardous materials release is discovered at the site that was not the subject of the site investigation and remedial action for which the certificate of completion was issued.

(5) A material change in the facts known to the administering agency at the time the certificate of completion was issued, or new facts, causes an agency to find that further site investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(6) The responsible party induced the administering agency to issue the certificate of completion by fraud, negligent or intentional non-disclosure of information, or misrepresentation.

(c) Any agency challenging the issuance of a certification of completion for work at a site by the administering agency shall state the grounds for objecting to the issuance of the certificate of completion, showing that the site investigation and remedial action at the site was not satisfactorily completed or that a permanent remedy to the release has not been accomplished.

NOTE: Authority cited: Section 25261, Health and Safety Code. Reference: Section 25264 of the Health and Safety Code.

